

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

January 27, 2011

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Rule Amendment OA 09-01
Request to Amend Title 13, Chapter 5, Hawaii
Administrative Rules (Chap. 13-5, HAR), to designate a
portion of the State Land Use Conservation District into the
Resource Subzone

**PETITIONER/
LANDOWNER:** A Charitable Foundation Corporation (ACF)

LOCATION: Pupukea Ahupuaa, Oahu

TMKs: (1) 5-9-023: portion of 001
(1) 5-9-024:001

PETITION AREA: Approximately (\approx) 28.579-acres

SUBZONE: Undesignated

DESCRIPTION OF AREA AND CURRENT USE (Exhibit 1, 2, 3 & 4)

TMKs: (1) 5-9-023: portion of 001 and (1) 5-9-024:001 is situated on the ridge above the northern rim of Waimea valley in Pupukea along the boundary of Waimea and Pupukea ahupuaa and the boundary of Koolauloa and Waiialua Districts as well.

Currently, tour operator, Happy Trails utilizes a well-established horseback riding trail system that traverses portions of the subject area.

Existing Land Use Classifications

A State Land Use District Boundary Amendment petition was filed on March 15, 2005 with the State Land Use Commission (LUC) to reclassify this 28.759-acres area from the Agricultural district to the Conservation district in addition to reclassifying \approx 5.219-acres of an adjacent parcel from the Conservation to the Agricultural district. Docket #A05-758 for this Boundary Amendment was approved on April 21, 2006 by the LUC. The new addition to the Conservation District remains undesignated.

Geographic Characteristics

A small plateau is formed along the top of the ridge that gradually descends toward the sea at varying gradients between 5-15%. Upon either side of the plateau the topography falls off abruptly. Mauka and to the east are the highland/watershed Conservation land. To the south, the plateau carries over into TMK: (1) 6-1-002:022 that lies within the Conservation Limited and General subzone above Waimea valley. To the west is a fallow and undeveloped agricultural lot. To the north and east of the site is the Pupukea residential/agricultural community. The site descends into Kalahopele gulch to the north. Elevations range from about 200-feet above msl at the makai end to 750-feet msl at the mauka end of the site.

Soils

The Department of Agriculture's *Agricultural Lands of Importance to the State of Hawaii (ALISH)* Map identify portions of the project area as "prime agricultural land." The area contains Helmano silty clay; Manana silty clay; and Wahiawa silty clay soils. These soils may be used for pasture, woodland and wildlife habitat. In areas with less than a 25% slope, these soils may be used for crops such as sugarcane and pineapple.

Hydrological Characteristics

The project site is situated within the Kawailoa aquifer system, within the critical wastewater disposal area and in the Board of Water Supply's "No Pass Zone." The purpose of the "No Pass Zone" is to protect underground drinking water aquifers from contamination that could result from ground disposal of wastewater.

There are no surface waters or wetlands in the site. The site is located within Zone D, areas in which flood hazards are undetermined, but possible and Zone X, areas to be determined to be outside 0.2% annual chance flood plain.

Biological Characteristics

Flora

According to the petitioner, a botanical survey was conducted in December 2004. According to the report, three distinct vegetation types were observed: 1) Ironwood trees, seedlings and saplings; 2) grass species such as Hilo grass, Henry's crab grass, foxtail grass, Guinea grass, sour grass and low flowering plants such as *Calyptracarpus viralis* Less. and brass buttons; and 3) Weedy scrub. The only native species found on this site was a single vegetative *bidens* (Kookoolau) plant. The project area is now dominated by alien plant species and it is believed that there are no known threatened or endangered plant species within the project area.

Fauna

According to the petitioner, a faunal survey was conducted in March 2005. Six bird species were observed, the migratory golden plover (Kolea); spotted doves; zebra finches; mynahs; Brazilian cardinals; and house sparrows. With the exception of the Kolea, all of the birds are introduced species.

Mongoose, feral cats and mice were not observed, but are likely to be present. Consultation with the U.S. Fish and Wildlife Service indicated that there are no invertebrates or other endangered species of concern in the area.

Historical Characteristics

Commercial agriculture began in Pupukea as early as the 1860's with the production of sugarcane. Pineapple production began in the uplands in 1910 when Honolulu Pineapple Co. acquired a lease for lands surrounding the Puu o Mahuka Heiau. Cultivation of pineapple continued until the 1960's. Avocados, apples and sisal were also grown. The land was later seeded with eucalyptus, paperbark and ironwoods for the creation of watershed areas. Additionally, because it is known that the project area was utilized for commercial agriculture during the 1900's, it is believed that significant subsurface deposits are unlikely to exist in an undisturbed fashion.

Given the location of the site, it is unlikely that the land was used for habitation. The project area was more likely used for collection of raw materials and possible dry land agriculture; As the area was used for pineapple crops, it is possible that items associated with commercial agriculture could be encountered.

Several cultural sites are located within the Pupukea and Waimea ahupuaa. Puu O Mahuka Heiau under the Division of State Parks is located northwest of the subject area and is on the National and State Historic Places. The Heiau is one of the most significant and largest on Oahu and is believed to be a Luakini Heiau and may have some cultural significance to Wailua, Kauai.

A Cultural Impact Assessment was prepared in August 2002. It is believed that habitation in the subject area would have been unlikely prior to western contact due to the location of the Heiau on the ridge. Habitation most likely would not occur in such close proximity to the Heiau. The property also provides a backdrop to interpret the Heiau in its setting adjacent to Waimea valley.

Scenic & Visual Resources

The undesignated subzone area located inland is neither visible from Kamehamha Hwy. nor from publicly accessible portions of Waimea Valley. The project area is over one mile inland from the highway and obscured by the valley ridge. On site, along the rim of the valley, the property offers sweeping views of Waimea valley and bay and the north shore coastline.

Hazardous & Toxic Materials

A Phase I Environmental Assessment has been completed to investigate past and present land uses for the property and surrounding area to determine if the potential for hazardous materials contamination exists. According to the petition, no hazardous wastes or substances were observed during the site reconnaissance.

Natural Hazard Potential

According to the petitioner, there are no apparent hazards posed by rock, soil or other slope movement that would affect land suitability. There are no residences or other

potentially affected uses of concern in the area below the ridge. It appears that a stream and gulch separate the private residents that appear to be on a ridge across from the subject area. There has not been an assessment of rock fall hazard at the subject location.

Infrastructure Evaluation

Access to the subject area is provided via Maulukua Road. Electrical power, telephone service and municipal water is available within close proximity to the project area. The project site is located in the critical wastewater disposal area and lacks sewerage. The subject area lies above the Department of Health's designated Underground Injection Control Line and in the Board of Water supply's "No Pass Zone."

PROPOSED ACTIONS OF THE PETITIONER (Exhibit 5)

ACF is petitioning to place their undesignated Conservation District property into the Resource subzone. The designation will allow the applicant or future landowners to apply for land uses within the Conservation district. AFC would like to preserve the open mauka views that overlook Waimea Valley.

The proposed action to designate the undesignated Conservation district land into the Resource subzone shall not involve any development or construction of improvements. The petitioner would like to eventually apply for consolidation and resubdivision of the project area.

Review of Property Characteristics in Relation to Subzone Objectives

As described in §13-5-13, Hawaii Administrative Rules (HAR), the objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. Specifically, the Resource Subzone shall encompass:

- Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
- Lands suitable for growing and harvesting of commercial timber or other forest products;
- Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping and picnicking;
- Lands and state marine waters seaward of the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of the waves on shore to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

Although the subject area is undeveloped land with introduced species the property is part of the Pupukea Ridge Preservation Project that has strong community support and promotes open space. The property provides passive recreational opportunities such as pedestrian and equestrian trails.

Alternative Considered

Under the 'No Action' alternative, the land would be identified as undesignated Conservation district land and no identified land uses could be applied for. Another possible alternative would be to designate the subject area within another subzone of the Conservation District.

STAFF ANALYSIS:

Pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), any change to Conservation District subzone boundaries must be made by amending Chapter 13-5, HAR. Statutes and rules that govern the process by which amendments of Chapter 13-5, HAR, may be made include:

- A. §91-2 through 91-7, Hawaii Revised Statutes (HRS);
- B. §2, Act 168, Session Laws of Hawaii 1998;
- C. §183(c)-4, HRS;
- D. §13-1, HAR; and
- E. §13-5-5, HAR.

Requests to amend the administrative rules are reviewed by the Legislative Reference Bureau and the Department of the Attorney General. In general, in order to take effect, proposed rule amendments must obtain departmental and gubernatorial authorizations for both the public hearing and final approval.

Authorization for Public Hearing:

The first major step to amend the administrative rules is to hold a public hearing. Approval from the Board of Land and Natural Resources to hold a public hearing was granted on November 19, 2009. Approval from the Governor was granted on October 20, 2010.

Public Hearing

The Public Hearing regarding this rule amendment was held on December 14, 2010 at the Pupukeya Elementary School Cafeteria at 6 pm. No one from the general public attended the hearing.

Approval/Disapproval:

Should the Board approve this petition then the proposed rule change will be forwarded to the Governor for approval. Upon receiving the Board's approval, both the Legislative Reference Bureau and the Department of the Attorney General would review. With the Department of the Attorney General approval 'as to form', the proposed rule amendment shall be forwarded to the Governor for the final decision.

State Policies and Procedures:

Staff processed the petition in accordance to the Governors' Administrative Directive # 09-01 to guide policy and procedures for the adoption, amendment or repeal of administrative rules. The Governor directs that petitions for administrative rule changes address certain policy topic areas.

§2 of Act 168, Session Laws of Hawaii 1998, the Hawaii Small Business Regulatory Flexibility Act:

On November 19, 2009, the Board of Land and Natural Resources found that the proposed rule amendment would not impact or affect small business. Therefore a Small Business Impact Statement is not required. In addition, Staff attended the Small Business Regulatory Review Board meeting on December 29, 2010 to answer any questions or concerns regarding this matter. There were no outstanding concerns regarding this matter.

Chapter 343, HRS, Requirements:

In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, the Final Environmental Assessment has been reviewed and accepted by the LUC. Notice was published in the October 25, 2005 issue of the Environmental Notice. The Environmental Assessment was a prerequisite to the State Land Use District Boundary Amendment processed by the LUC.

DISCUSSION

Staff is of the opinion that the Resource subzone is an appropriate designation for the area. The subject area is in conformity with the objectives of the Resource subzone such as lands necessary for providing future parkland and for outdoor recreational uses such as hiking, camping and picnicking.

Staff notes the subject area is in the vicinity of Puu O Mahuka Heiau, a State Historical Site under the Division of State Parks. Staff believes with a Resource subzone designation, open space and the view corridors of Waimea Valley including the length of the ahupuaa (mountain to the sea) will be promoted in addition to preserving the historical landscape of the Heiau and along the northern rim above Waimea Valley. Furthermore, the subject area defines the traditional boundary of Waimea and Pupukea ahupuaa and the boundary of Koolauloa and Waialua Districts as well.

Staff further notes the property is part of the Pupukea Ridge Preservation Project that has strong community support and promotes open space. The property provides passive recreational opportunities such as pedestrian and equestrian trails.

RECOMMENDATION

Based on the preceding analysis, Staff recommends the Board of Land and Natural Resources:

1. Grant petitioner, A Charitable Foundation Corporation (ACF) request to amend Chapter 13-5, Hawaii Administrative Rules to designate approximately 28.579-acres known as TMKs: (1) 5-9-023: portion of 001 and (1) 5-9-024:001 located at Pupukea Ahupuaa, Oahu of undesignated Conservation District land into the Resource Subzone; and
2. Authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

Respectfully submitted,

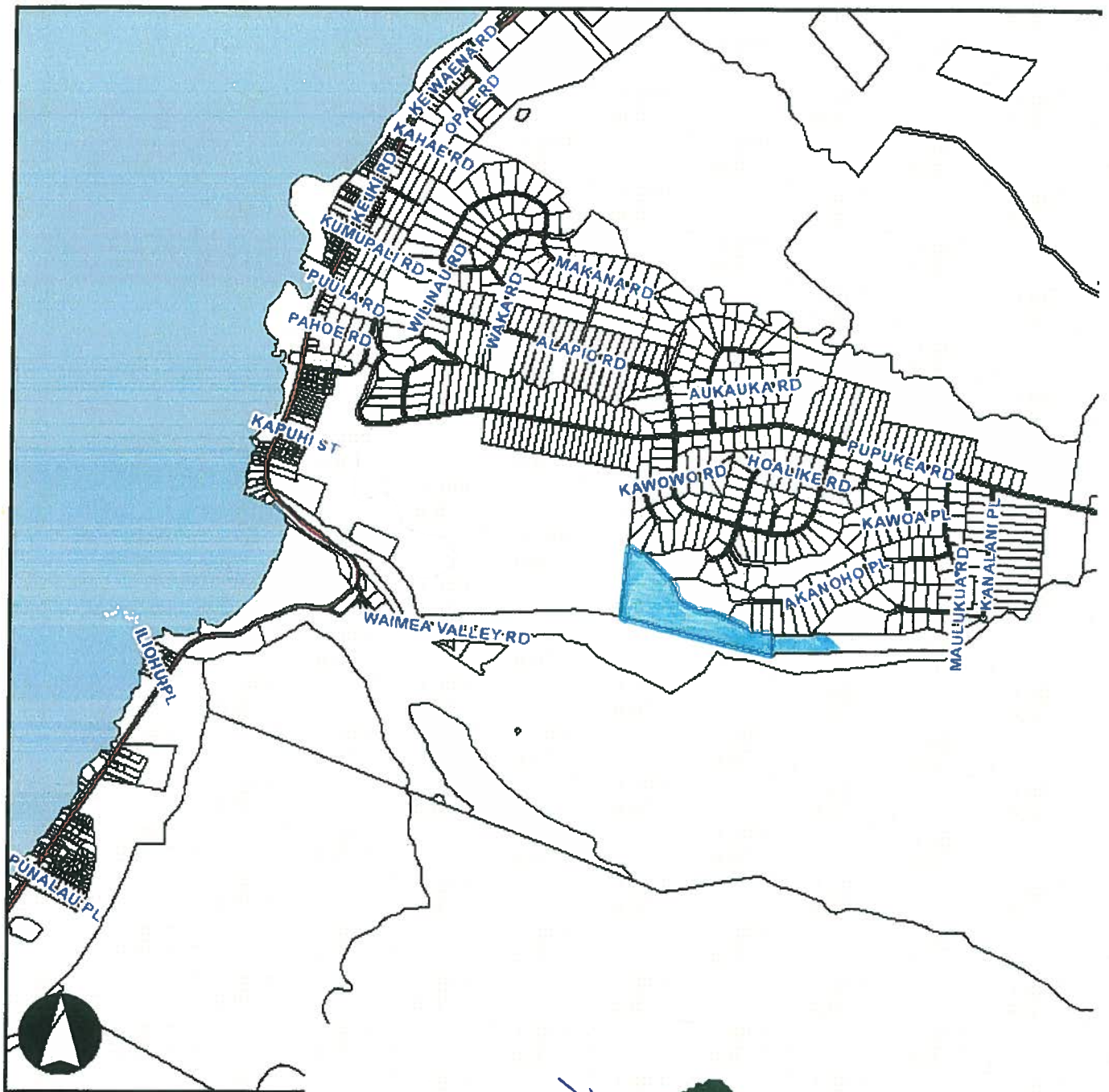


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for Submittal:



WILLIAM J. AILA, JR., Interim Chairperson
Board of Land and Natural Resources



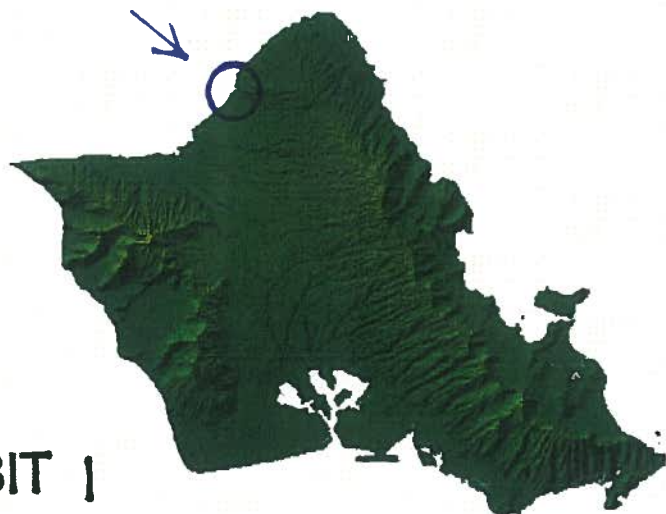
undesigned Conservation District land



Coastline

Water

Land



Pupukea

EXHIBIT 1



Waimea Bay, Oahu



Photo 3-ENE



Photo 4-E

EXHIBIT 3

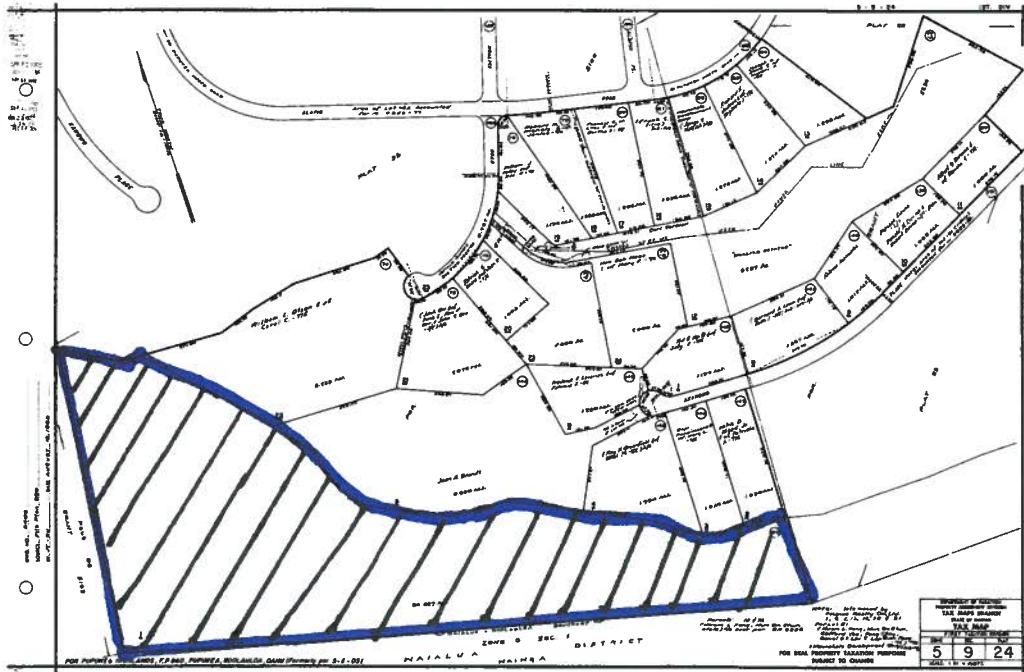


Photo 1-N

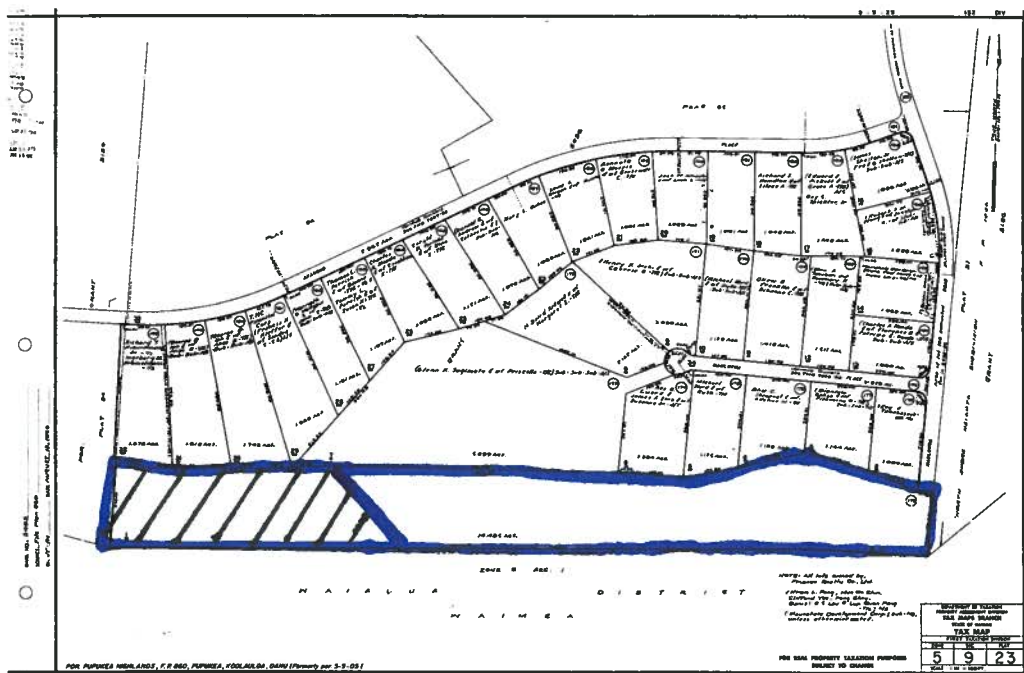


Photo 2-E

EXHIBIT 4



TMK: (1) 5-9-024: 001



TMK: (1) 5-9-023: portion of 001



Area proposed to be designated into the Resource subzone

EXHIBIT 5